



Senate

General Assembly

February Session, 2014

File No. 327

Senate Bill No. 371

Senate, April 3, 2014

The Committee on Labor and Public Employees reported through SEN. HOLDER-WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING RETALIATION AGAINST IMMIGRANT WORKERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2014*) (a) As used in this
2 section:

3 (1) "Employee" means any individual engaged in service to an
4 employer in a business of his employer;

5 (2) "Employer" means an individual engaged in business who has
6 employees, including the state and any political subdivision thereof;
7 and

8 (3) "Unfair immigration-related practice" means any discriminatory
9 practice directed at an employee who has immigrated to this country,
10 including, but not limited to:

11 (A) Requesting that the employee provide additional or different

12 documents than are required under Section 1324a(b) of Title 8 of the
13 United States Code, or refusing to accept documents provided by the
14 employee pursuant to said section that reasonably appear to be
15 genuine;

16 (B) Checking or threatening to check the employment authorization
17 status of an employee at a time or in a manner not required under
18 Section 1324a(b) of Title 8 of the United States Code;

19 (C) Filing or threatening to file a false police report against an
20 employee; and

21 (D) Contacting or threatening to contact immigration authorities to
22 report an employee.

23 (b) No employer shall engage in any unfair immigration-related
24 practice against an employee for the purpose of retaliating against
25 such employee for exercising any right afforded to him or her
26 pursuant to the provisions of chapters 557 to 559, inclusive, 561, 563a,
27 566a, 567, 568 or 571 of title 31 of the general statutes, including, but
28 not be limited to:

29 (1) Filing a complaint or informing any individual of an employer's
30 alleged violation of any provision of said chapters, provided such
31 complaint or disclosure was made in good faith;

32 (2) Seeking information regarding whether an employer is in
33 compliance with any provision of said chapters; and

34 (3) Informing an individual of his or her potential rights and
35 remedies under any provision of said chapters, or assisting such
36 individual in asserting his or her rights or seeking remedies under any
37 provision of said chapters.

38 (c) Nothing in this section shall be construed to prevent an
39 employer from complying with the requirements of state or federal
40 statutes, rules or regulations, case law or rules of self-regulatory
41 organizations.

42 (d) Engaging in an unfair immigration-related practice against an
43 employee within ninety days after the employee exercises any right
44 afforded to him or her pursuant to the provisions of chapters 557 to
45 559, inclusive, 561, 563a, 566a, 567, 568 or 571 of title 31 of the general
46 statutes shall create a rebuttable presumption of having done so in
47 retaliation for the exercise of those rights.

48 (e) Any employee may file a complaint with the Labor
49 Commissioner alleging violation of subsection (b) of this section, not
50 later than one hundred eighty days after such violation occurs. Upon
51 receipt of such complaint the commissioner shall investigate such
52 complaint and may hold a hearing in accordance with the provisions
53 of chapter 54 of the general statutes. After the hearing, the
54 commissioner shall send each party a written copy of his or her
55 decision.

56 (f) If the commissioner finds an employer has violated subsection
57 (b) of this section, the commissioner may (1) levy against the employer
58 a civil penalty of up to five hundred dollars for the first violation and
59 one thousand dollars for each subsequent violation, (2) suspend the
60 license of such employer to transact such business in this state for a
61 period of not more than thirty days for a first violation and not more
62 than ninety days for each subsequent violation, and (3) award an
63 employee aggrieved by such violation all appropriate relief including
64 rehiring or reinstatement to his or her previous job, payment of back
65 wages, reestablishment of employee benefits or any other remedies the
66 commissioner may deem appropriate.

67 (g) Any party aggrieved by the commissioner's decision under
68 subsection (f) of this section may appeal the decision to the Superior
69 Court in accordance with the provisions of chapter 54 of the general
70 statutes.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	October 1, 2014	New section
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LAB *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Labor Dept.	GF - Potential Revenue Gain	Up to 28,125	Up to 75,000

Municipal Impact: None

Explanation

The bill prohibits employers from retaliating against immigrant employees, and establishes civil penalties of up to \$500 for initial violations and up to \$1,000 for each subsequent violation. This results in a potential revenue gain of up to \$28,125 in FY 15 and up to \$75,000 annually thereafter.

The bill allows an employee to file a complaint with the Labor Commissioner, and requires the Department of Labor (DOL) to investigate any complaint. It allows DOL to levy a penalty of up to \$500 for initial violations and \$1,000 for subsequent violations. It is anticipated that there will be fewer than 75 violations annually, resulting in a revenue gain of up to \$28,125 in FY 15 and up to \$75,000 annually thereafter.

There is no impact to the Judicial Department from allowing any aggrieved party to appeal to the Superior Court. The number of appeals is not anticipated to be great enough to need additional resources. The court system disposes of over 400,000 cases annually.

The Out Years

The annualized ongoing fiscal impact identified above would

remain constant into the future as penalty amounts are set by statute and are not subject to inflation.

Sources: Department of Labor Wage and Workplace Standards Division

OLR Bill Analysis**SB 371*****AN ACT CONCERNING RETALIATION AGAINST IMMIGRANT WORKERS.*****SUMMARY:**

This bill prohibits employers, including the state and municipalities, from taking certain actions to retaliate against immigrant employees for exercising their rights under various state labor laws. Its prohibited “unfair immigration-related practices” cover any discriminatory practice directed at an immigrant employee, including (1) checking or threatening to check whether the employee can legally work in the country at a time or in a way not required by federal law or (2) contacting or threatening to contact immigration authorities to report an employee. But, the bill specifies, that its provisions do not prevent an employer from complying with state or federal laws or regulations or the rules of self-regulatory organizations (e.g., businesses regulated by the Securities and Exchange Commission).

The bill establishes a rebuttable presumption that an employer who engages in unfair immigration-related practices within 90 days after an employee exercises his or her rights under the specified labor laws is taking a retaliatory action (i.e., the employer will have to prove that the action was not retaliatory).

The bill allows employees to file a complaint with the labor commissioner within 180 days of the employer’s alleged retaliatory action. The commissioner must investigate and can hold a hearing, after which she must send the parties a written copy of her decision. If she finds violations, the commissioner can (1) impose cure fines of up to \$500 for initial violations and \$1,000 for each subsequent violation; (2) suspend an employer’s license to do business in the state for up to 30 days for an initial violation and up to 90 days for each subsequent

violation; and (3) award an employee appropriate relief, including rehiring or reinstatement, back pay, reestablishment of benefits, and any other appropriate remedies. (It is unclear if the commissioner's authority to increase penalties for subsequent violations applies to violations against the same employee or any subsequent violations by the same employer. It is also unclear if the labor commissioner has authority to suspend licenses she did not issue.) An aggrieved party can appeal the commissioner's decision to the Superior Court.

EFFECTIVE DATE: October 1, 2014

UNFAIR IMMIGRATION-RELATED IMMIGRATION PRACTICES

Under the bill, an unfair immigration-related practice is any discriminatory practice directed at an employee who has immigrated to this country, including:

1. asking the employee to provide documents other than those that must be provided under the federal law on the unlawful employment of aliens, or refusing to accept documents that reasonably appear genuine;
2. checking or threatening to check an employee's employment authorization at a time or in a way not required by the federal law on the unlawful employment of aliens;
3. contacting or threatening to contact immigration authorities to report an employee; or
4. filing or threatening to file a false police report against an employee.

(The bill does not specify, but presumably an employer must know or believe that an employee is an immigrant before taking any of the first three prohibited actions above. However, it is unclear if this prior knowledge would be necessary to make the employer's filing or threatening to file a false police report an unfair immigration-related practice.)

Retaliation

The bill prohibits employers from using unfair immigration-related practices to retaliate against an employee for exercising any of his or her rights provided under the state's laws on employment regulation, wages, labor organizations, labor relations, personnel files, professional employer organizations (e.g., a business that co-employs a client's employees to provide human resources services), unemployment compensation, workers' compensation, or workplace safety. An exercise of these rights can include:

1. filing a complaint or telling anyone, in good faith, about an employer's alleged violation of the above labor laws;
2. seeking information on whether an employer is in compliance with these laws; or
3. telling someone about his or her potential rights and remedies under these laws or helping someone assert these rights or seek these remedies.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 8 Nay 2 (03/18/2014)